



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/166523

PRELIMINARY RECITALS

Pursuant to a petition filed June 8, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Office of the Inspector General (OIG) to recover FoodShare benefits (FS), a hearing was held on July 29, 2015, by telephone. A hearing set for July 1, 2015 was rescheduled in order to obtain an interpreter.

The issue for determination is whether an administrative law judge can waive an FS overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Office of the Inspector General
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner received FS in Brown County from 2012 through 2014. In April, 2015, she was found guilty of welfare fraud following a trial to the court. The FS agency disqualified petitioner from receiving FS for twelve months following the guilty verdict. See Exhibit 1.
3. By notices dated May 14, 2015, the OIG notified that she was overpaid a total of \$4,666.35 in FS broken down into three separate claims: claim no. [REDACTED] for \$228.95 from October 18 through December 31, 2012, claim no. [REDACTED] for \$2,637.88 from April 15 through

December 31, 2013, and claim no. [REDACTED] for \$1,799.52 from January 16 through August 31, 2014. The 2014 claim listed petitioner's then 18-year-old daughter as a liable individual.

4. The claims were based upon "purchases" at two grocery stores that later were found to be fraudulent. The grocery store owners were found guilty of FS fraud along with some of the customers including petitioner.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). In addition, claims arising from FS trafficking-related offenses shall be recovered in the value of the trafficked benefits. 7 C.F.R. §273.18(c)(2). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

In this case the overpayment consisted of benefits that the OIG determined to be trafficked. [REDACTED] explained the procedure for determining which benefits were considered to be trafficked (high dollar purchases from a store that had virtually no stock, paying off debts with FS as evidenced by the store's debt ledgers, purchases close in time, and purchases for exact dollar amounts). Petitioner did not dispute the calculations.

Petitioner requested two things in the hearing. First, she asked if the judge could waive the overpayment due to hardship. Unfortunately, there is nothing in federal FS rules or in Wisconsin law that gives the Division of Hearings and Appeals that kind of authority. This division has authority to determine whether the overpayment was calculated correctly and which individuals are liable for repaying the overpayment, but there is no authority allowing this office to waive the claim.

Second petitioner asked about her daughter's liability. Her daughter turned age 18 in late 2013, and thus the system added her as a liable individual for the 2014 because she was an adult member of the household. [REDACTED] acknowledged that petitioner's daughter likely had no role in the fraudulent activity, and that she had no objection to removing her as a liable party.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals does not have authority to waive an FS overpayment claim based upon hardship.
2. Petitioner's daughter can be removed as a liable individual because she had no part in the fraudulent activity.

THEREFORE, it is

ORDERED

That the matter be remanded to the OIG with instructions to remove petitioner's daughter M.O. as a liable individual on claim no. [REDACTED], within 10 days of this decision. In all other respects the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

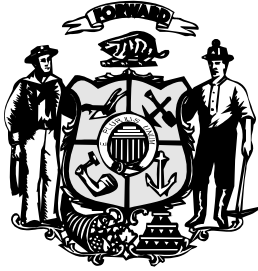
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of August, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 3, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability
NadineE. [REDACTED]@wisconsin.gov